

<b>JRPP REF NO</b>	20102YE017
<b>DA No</b>	10/DA-80
<b>PROPOSAL</b>	Demolition of existing- new 5 (five) storey mixed use development with basement parking. 219 – 231 KINGSGROVE ROAD, KINGSGROVE
<b>APPLICANT</b>	Australian Consultants Architects
<b>ZONING</b>	Zone no.3(c) – Business Centre Zone
<b>APPLICABLE PLANNING INSTRUMENTS</b>	SEPP No. 1 – Development Standards, SEPP No.55 – Remediation of Land, SEPP No. 65 - Design Quality in Residential Buildings, SEPP (Building Sustainability Index: BASIX) 2004, SEPP (Infrastructure) 2007, Hurstville Local Environmental Plan 1994, Development Control Plan No 1 - LGA Wide - 2.2- Neighbour Notification, Section 3.1 Car Parking Section, Section 3.3 Access and Mobility, Section 3.4 - Crime Prevention Through Environmental Design.
<b>HURSTVILLE LOCAL ENVIRONMENTAL PLAN 1994 INTERPRETATION OF USE</b>	Residential component-“Residential Flat Building” Retail component – “Shop”
<b>OWNER/S</b>	Portland Holdings Pty Ltd
<b>EXISTING DEVELOPMENT</b>	Mixed use development
<b>COST OF DEVELOPMENT</b>	\$12,436,930.00
<b>REASON FOR REFERRAL TO JRPP</b>	Capital Investment Value exceeds \$10,000,000.00
<b>REPORT AUTHOR/S</b>	Senior Development Assessment Officer, Ilyas Karaman
<b>HAS A DISCLOSURE OF POLITICAL DONATIONS OR GIFTS BEEN MADE?</b>	No

## EXECUTIVE SUMMARY

1. The application seeks approval for a five (5) storey mixed use building with two (2) levels of basement car parking.
2. The proposed floor space ratio exceeds the maximum floor space ratio of 1.5:1 under Council’s Local Environmental Plan with an overall proposed floor space ratio of 2.28:1 and its objection to the SEPP No.1 is considered to be not well-founded.
3. The proposal was publicly exhibited in accordance with statutory requirements and received two (2) objections, which are addressed in the report.
4. The proposal is not considered to be in the public interest.

## RECOMMENDATION

THAT the application be refused for the reasons stated in the report.

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## DESCRIPTION OF THE PROPOSAL

The proposal seeks approval for the demolition of the existing buildings on the site at 219-231 Kingsgrove Road, Kingsgrove to allow for the proposed construction of a five (5) storey mixed use development with a total of thirty-five (35) residential units and 4 x retail shops with basement parking for a total of 81 vehicles. The proposed built form covers a corner site with two (2) street frontages at Mashman Avenue and Kingsgrove Road, Kingsgrove.

The development will comprise specifically of the following:

- Ground Floor: Four (4) retail shops comprising of a total of 569 square metres, 434 square metres of communal space, lobby entry with three (3) separate lifts and lobby areas plus fire stairs , combined vehicle entry and exit to basement 1;
- Basement 1: Car park for 36 vehicles spaces with 33 x commercial spaces and 3x residential visitor spaces and one (1) loading bay, service rooms including waste management room;
- Basement 2: Car park for 45 vehicles spaces with 41 x residential spaces (including 4 x accessible spaces and 6 x visitor spaces) and 4 x commercial spaces plus service rooms;
- Level 1: 1 x one bedroom unit and 8 x two bedroom units with three (3) separate lifts and lobby areas plus three (3) fire stairs;
- Level 2: 1 x one bedroom unit and 8 x two bedroom units with three (3) separate lifts and lobby areas plus three (3) fire stairs;
- Level 3: 1 x one bedroom unit and 8 x two bedroom units with three (3) separate lifts and lobby areas plus three (3) fire stairs;
- Levels 4: 1 x one bedroom unit 7 x two bedroom units with three (3) separate lifts and lobby areas plus three (3) fire stairs.

Vehicular access to the basement levels of the property is via Mashman Avenue with a combined vehicle entry and exit width of 9.5m narrowing 6.3m to basement 1. A residential lobby with lifts is located at the Mashman Avenue street frontage with separate entries to the four retail shop available from the street frontages.

## BACKGROUND

An earlier development application 07/DA-410 for a six (6) storey mixed use development with above ground car parking and basement level supermarket was lodged with Council on 20 September 2007. The application was the subject of a deemed refusal appeal to the NSW Land and Environment Court. The matter was heard by the NSW Land and Environment Court (Proceedings 10446 of 2008) with the appeal dismissed on 2 October 2008 mainly due to traffic, parking and loading concerns from the proposed supermarket.

A later development application 08/DA-588 for an six (6) storey mixed use development with above ground car parking and a basement level supermarket was lodged with Council on 10 December 2008. The application was the subject of an appeal to the NSW Land and Environment Court on the basis of Council's deemed refusal of the application.

An amended proposal comprising of a part five (5) storey building with basement supermarket, ground floor with retail and parking, first and second floor for parking and the third and fourth floor for residential use was approved by the NSW Land and Environment Court (Proceedings 10076 of 2009) on 16 June 2009.

A time-line summary of the current development application 10/DA-80 is provided below:

- 3 September 2009 – Preliminary Development Application lodged with Council for five (5) x storeys with ground floor retail and above four (4) residential levels with two (2) levels of basement.
- November 2009 - Referral to Southern Sydney Group Councils' Urban Design Review Panel with comments received in December 2009.
- 12 March 2010 – Current Development Application 10/DA-80 lodged with Council.
- 19 March 2010 – Referrals sent to RTA, RailCorp, Rockdale City Council
- 19 March 2010 to 6 April 2010 – Exhibition period of application with two (2) submissions received.
- 1 April 2010 Application presented to Southern Sydney Group Councils' Urban Design Review Panel.
- 4 May 2010 Southern Sydney Group Councils' Urban Design Review Panel comments received.
- 13 May 2010 - JRPP Briefing.
- 18 May 2010 - RTA comments provided.
- 20 May 2010 - Additional information regarding parking, stormwater, geotechnical report requested from applicant
- 1 June 2010 - Revised basement plans received by Council.
- 10 June 2010 - Revised stormwater plans received by Council.
- 11 June 2010 - Additional information requested from applicant to address traffic impacts.
- 18 June 2010 - Revised traffic report received by Council.

## **DESCRIPTION OF THE SITE AND LOCALITY**

The subject site is located at 215-231 Kingsgrove Road Kingsgrove. The site has a site area of 1716m<sup>2</sup> with a primary frontage to Kingsgrove Road of 46.33m and a secondary frontage to Mashman Avenue of 36.575m. The subject allotment has a shared northern boundary with the East Hills Railway Corridor at a length of 41.36m.

The allotment has a fall of approximately 2.4m from north to south along the Kingsgrove Road Boundary. An approximate 1.0 m fall is also evident from west to east along the Mashman Avenue boundary. The subject site is significantly higher than the adjoining rail corridor with the site being between 3.27m and 5.62m higher than the existing level of the adjoining railway tracks. A splayed concrete retaining wall is located along the northern boundary of the site, adjacent to the railway corridor.

The existing development on the site includes a two storey mixed use retail and residential development with at grade car parking at the rear, accessed from Mashman Avenue. A bus stop is located on the Kingsgrove Road frontage and a taxi rank for 4-5 vehicles is located at the Mashman Avenue frontage. Mashman Avenue is a relative short road having the same length of the site being 36.575m and is a narrow road being approximately 7-8 metres in length with two-way traffic access with a set of traffic lights located at the intersection with Kingsgrove Road. Mashman lane is also a narrow lane, which has traffic directed only one way into Mashman Avenue.

Six (6) trees are evident at the rear of the existing buildings on the subject site. None of these trees are considered of sufficient health or significance to warrant retention under Council's Tree Preservation Order.

The proposal is bounded by the East Hills Railway Line to the North, Kingsgrove Road to the East, Mashman Avenue to the South and the Mashman Pottery Site to the West.

Kingsgrove Road predominately comprises of a shopping strip characterised by two storey developments (generally ground floor retail and first floor residential or commercial) on allotments predominately 6m in width. This strip style retail with residential/commercial uses above is also evident for the allotment on Mashman Avenue directly to the south of the subject site. This predominant two storey built form is unlikely to change significantly under the current planning controls as the subdivision pattern, specifically the narrow widths of the allotments along Kingsgrove Road, do not allow for the provision of sufficient car parking necessary for additional development. In order for the existing commercial area to experience built form changes comparable with the current proposed development, significant amalgamation of allotments would be required.

The Mashman Pottery site, which adjoins the western boundary of the subject site, is currently utilised for an industrial purpose and has recently been rezoned on 22 January 2010 from "part zone no. 4 - Light Industrial and part zone no.2 - Residential" to zone 3(c) - Business Centre zone under the Hurstville LEP. Presently the Mashman site comprises generally single storey older style industrial buildings. The rezoning of this site in combination with a site specific Development Control Plan permits the redevelopment of the site with buildings ranging in height from two (2) to a maximum height of four (4) stories with a maximum floor space ratio of 2:1.

It should be noted with reference to the desired building height that Council, following public exhibition of the LEP Amendment no. 71 of the Mashman Site, had specifically reduced the final maximum height permissible from five (5) storeys down to four (4) storeys.

The Council through this most recent environmental planning instrument have clearly articulated that the desired future character should be four (4) storeys and not five (5) storeys as proposed in the current application.

On the opposite side of the railway corridor, the character of the area generally comprises one and two storey industrial premises in a pocket of land located in the area between the East Hills railway corridor and the M5 Motorway. The single exception to this one and two storey character of this industrial land on the opposite side of the railway corridor is an existing part 2, part 5 storey commercial building located on the corner of Kingsgrove Road and Commercial Road. The car-parking for this building is located on two (above ground) levels set back from Kingsgrove Road by between approximately 10 and 14 metres. The five storey component of this building is set back from Kingsgrove Road by approximately 20 metres.

The existing development on the eastern side of Kingsgrove Road being opposite to the site are two (2) storey buildings, currently a pub at ground floor level with accommodation on first floor and a separate two storey building used as a mechanical workshop for automobiles. This side of the Kingsgrove Road is under the local government area of Rockdale City Council and is zoned 3(c) - General Business with a three (3) storey height limit for a mixed use development.

## **COMPLIANCE AND ASSESSMENT**

The development has been inspected and assessed under the relevant Section 79C (1) "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

### **1. Environmental Planning Instruments**

#### Hurstville Local Environmental Plan

The land is zoned 3(c) - Business Centre zone under the provisions of the Hurstville Local Environmental Plan (LEP) 1994 and the proposed use as a mixed use building is not defined in the LEP, however it is a permissible use, given that it is not listed as a prohibited use in the zone. The components of the building are listed being the residential units defined as a "Residential Flat Building" and the retail areas defined as "Shops".

The objectives of the zone no.3(c) - Business Centre zone are as follows:

- (a) to maintain a commercial and retail focus for larger scale commercial precincts;*
- (b) to allow for residential development in mixed use buildings, with non-residential uses on at least the ground level and residential uses above, so as to promote the vitality of business centres, and*
- (c) to provide opportunities for associated development such as parking, service industries and the like.*

It is considered that although the proposed development meets the objectives by maintaining a retail focus on the ground floor as per objective (a); the proposal of only four retail shops on the ground floor with thirty five (35) units on the four levels above provides only a marginal benefit in further promoting the vitality of business centres in the Kingsgrove Town centre with regard to objective (b) in the 3(c) - Business Centre zone.

The proportion of commercial/retail compared to non-commercial area proposed on site can be further exemplified numerically in that the proposed retail component correlates to a total of 569 square metres on a given site area of 1716 square metres, which represents a commercial floor space ratio of 0.33:1. Whilst the proposed non-commercial component of the building correlates to 3346.2 square metres, which represents a non-commercial floor space ratio of 1.95:1, this exceeds the total maximum floor area of 1.5:1 in the 3(c) - Business Centre zone.

Whilst, the proposal provides for higher density housing next to public transport (Kingsgrove Railway Station) and aims to achieve State planning objectives, the residential component in this case, alone, exceeds the total maximum floor area of 1.5:1 in the 3(c) - Business Centre zone and considered to be an overdevelopment of the site.

Clause 13 of Hurstville Local Environmental Plan 1994 provides the requirements for floor space ratio as indicated in the table below:

LEP	Control	Plan	Complies
Total FSR	1.5:1 max	2.28:1	No
Non residential component	1:1 max	0.33:1	Yes

As indicated in the table above the proposed mixed use development results in a non - compliance with Council's Local Environmental Plan in regards to overall floor space ratio. The non-residential floor space ratio proposed is 0.33:1, which complies with the LEP.

The proposed floor area exceeds the development standard by 0.78:1 or by 1,3384.4m<sup>2</sup>.

The SEPP 1 objection to this development standard is not supported as detailed below having regard to the application of the principles articulated by the Court in *Winten Property v North Sydney* (2001) 130 LGERA 79 as modified and embellished by *Wehbe v Pittwater Council* [2007] NSW LEC 827.

#### Clause 14 – Tree preservation orders

An assessment was carried out in relation to the six (6) trees on site. Several trees are also located outside the site within close proximity. An arborist report was provided to support the removal of the trees within the site. Council's Tree Management Officer advised of no objection to the removal of these trees.

The proposed landscape plan will incorporate a landscape design with appropriate species to the site and locality, which will be integrated with the overall building design. A tree management plan is also recommended to safeguard the existing trees outside the site within close proximity to the proposal

#### Clause 15 – Services

Pursuant to Clause 15, water supply, sewerage and drainage infrastructure is required to be available to the land. It is considered the above services can be provided to the proposed development on the land. Council's Manager Development Advice has advised of no objection to the proposed drainage of the site, subject to imposed conditions of consent such

as on-site detention system, the underground basement be required to pump out any storm water and that all other storm water to be drained by gravity to the street.

#### Clause 22 – Excavation, filling of land

Under this clause, adequate regard is to be given to any potential impacts to existing drainage patterns and soil stability in the locality regarding excavation of the site for two (2) levels of basement. As the site is also bordered by the railway to the north, concurrence from RailCorp was sought for the proposal.

A revised geotechnical report on the proposal has been submitted and assessed with no objections raised by RailCorp subject to RailCorp's recommended conditions of consent.

#### Clause 25A – Advertising and signage.

No outdoor advertising or signage is proposed as part of the application.

#### Clause 33 – Development in the vicinity of a heritage item.

The site is adjacent to the Mashman site, which is listed as heritage item in Hurstville Local Environmental Plan 1994. The site contains the Mashman's Pottery and Tile Works and has cultural significance with its long association with the Mashman family's role in the manufacture of terracotta products for building and drainage in New South Wales.

The pottery and tiles factory with its stacked chimney still remains on the site; however, the rezoning of the site will inevitably result in the removal of all remnant buildings on the site for a total redevelopment of the site. However, the LEP does require any redevelopment of that site to incorporate the heritage significance into the development. A heritage impact statement has been provided by the applicant by Planning Workshop Australia and has been reviewed. It is generally considered that the proposed development will not have adverse impacts on the future use and development of the Mashman site.

#### State Environmental Planning Policy (SEPP) No. 1 – Development Standards

The following assessment of the SEPP 1 Objection is assessed using the questions established in *Winten Property Group Limited v North Sydney Council*(2001) NSW LEC 46 (6 April 2001).

The SEPP 1 Objection submitted is assessed as follows:-

##### **1. Is the planning control in question a development standard?**

Yes, the subject of the objection, that is the overall floor space ratio is a development standard as referred to in Clause 13(2A)(a)Hurstville LEP 1994. A variation of an additional 0.78:1 of floor space ratio is sought in this case resulting in an overall floor space ratio of 2.28:1.

##### **2. What is the underlying purpose of the standard?**

The underlying purpose of the standard is to control the overall bulk and scale of the developments to achieve a consistent urban character for the 3(c) Business Centre Zone. In this case, Hurstville LEP permits a maximum floor space ratio overall of 1.5:1 of the site located in the Kingsgrove Town Centre.

**3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?**

The aims of SEPP No.1 state:

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the objects specified in s 5(a) (i) and (ii) of the Act state:

The objects of this Act are:

*(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land.*

The development standard promotes attainment of the aims and objectives above.

The Land and Environment Court has established on numerous occasions that it is insufficient merely to point to an absence of environmental harm in order to sustain an Objection under SEPP No.1 *Gergely & Pinter v Woollahra Municipal Council (1984)*; *Hooker Corporation Pty Ltd v Hornsby Shire Council (1986)*, *Winten Property Group Ltd v North Sydney Council (2001)* and *Memel Holdings Pty Ltd v Pittwater Council (2001)* and *Wehbe v Pittwater Council [2007]*.

Rather it is necessary to demonstrate that the strict application of the development standard in question would actually hinder the attainments of the objectives of the control. It must be demonstrated that there is a positive environmental or community outcome that arises directly out of the non-compliance.

The following considers the proposal against the relevant objectives of the development standard contained under clause 13 of Hurstville LEP 1994.

As stated above the underlying purpose of the standard is to control the overall bulk and scale of the developments to achieve a consistent urban character for the 3(c) Business Centre Zone. In this case, Hurstville LEP permits a maximum floor space ratio overall of 1.5:1 of the site located in the Kingsgrove Town Centre.

The applicant's objection to the development standard is based on the following:

1. The proposed building volume is considered to be slightly less building volume than the current approval of the site and that the proposal represents far less intensive use of the site (both in usage and traffic parking generation) compared with the previous approval;



2. The proposal is considered to be more suitable for its commercial setting in relation to likely future development as it will locate similar adjacent development (i.e. retail at two street frontages and residential above rather than retail uses below ground and parking facilities above;
3. The building is unlikely to detract from lower scale development within the locality as it is located on the edge of the centre and is a similar height and scale to the five storey building to the north beyond the railway line.
4. The building design adopts a contemporary form with a flat roof and built to the side boundaries, which provides strong definition of the site's corner position, that takes it's cue from the urban style apartment identified in the Residential Flat Design Pattern prepared by the Department of Planning (2001). This style responds to a commercial context both in façade treatment and active ground floor retail uses. The design provides elements that moderate building scale including articulated components at street level and above, vertical and horizontal elements, a variety of materials and staggered balconies.
5. The proposal is considered to satisfy the usual objectives for an FSR standard.

1 - Comment: The applicant is relying on the current approved development, which was an amended design to the six (6) storey building originally lodged at Council prior to the proceedings in the Land and Environment Court. This amended proposal in the Land and Environmental Court comprised of a part five (5) storey building with basement supermarket, ground floor with retail and parking, first and second floor for parking and third and fourth floor for residential use.

It is acknowledged that the approved development was more intensive in requiring more parking and slightly less representative in volume only on the 4<sup>th</sup> and 5<sup>th</sup> residential storeys, however, it should be noted that this approved development had a an overall FSR of 1.49:1 with a proposed commercial area of 1586 square metres and residential area comprising of 977 square metres. The majority of this commercial area was represented in the subfloor area and not visible to the street with two above ground floors for retail parking on levels 1 and 2 and two (2) further levels above on levels 3 and 4 comprised of only 17 residential units. This amended proposal approved by the court, complied with the development standard in overall floor space ratio of 1.5:1 for the site. Furthermore, if the approved development had been designed to relocate all parking to below the ground as the current proposal, the total height of the development will be reduced to only three (3) storeys, thus reducing the overall bulk and scale of the approved development.

In the current application, the proposed additional floor area results in approximately 1338.4 square metres that equates to an increase in 0.78:1 of floor space ratio, which is the entire fifth storey and at least half of the fourth storey of the development. Accordingly, the current proposal with the overall FSR of 2.28:1 is undesirable with a height of five (5) storeys.

2 - Comment: The applicant has argued the current mix of retail use on the ground floor is a better design to the current approved development. It is acknowledged the current proposal with ground floor retail activating two street frontages is a better outcome compared to the approved development with the majority of the retail below ground. However, in the current proposal the commercial/retail complies with an FSR of 0.33:1, whereas the residential FSR of 1.95:1 together with commercial

component is well over the maximum floor space ratio of 2.28:1, which adds to the overall bulk and scale of the development on the site. Furthermore, as previously stated, the proposal of only four (4) retail shops on the ground floor with thirty five (35) units on the four levels above, provides only a marginal benefit in further promoting the vitality of business centres in the Kingsgrove Town centre with regard to the zone objective in the 3(c) - Business Centre zone.

3- Comment: The applicant proposes the building is unlikely to detract from lower scale development within the locality as it is located on the edge of the centre and is a similar height and scale to the five (5) storey building to the north beyond the railway line. This existing commercial development at 1-5 Commercial Avenue, north of the railway line with a height of 5 storeys is however, located adjoining a primarily industrial area and provides significant setbacks from Kingsgrove Road. Furthermore, the site of the commercial building is located on substantially lower natural ground level with an appearance of three (3) storeys from Kingsgrove Road, whilst the two (2) levels occupied by basement car park are accessible and prominently visible from the frontage of Commercial Road. It is considered therefore that this existing commercial development is not comparable to the proposed development with a visible height of 5 storeys on the streetscape of Kingsgrove Road.

Furthermore, as previously stated, the Council through this most recent environmental planning instrument have clearly articulated that the desired future character should be four (4) storeys and not five (5) storeys as proposed in the current application. This four (4) storey height responds to a future height characteristic of the area. It is considered the proposed five (5) storey development on the subject site is not sympathetic to the desired future character of the area.

4- Comment: The applicant has also argued that the scale of the building is moderated by the flat roof design and the use of vertical and horizontal elements on the street elevations with a variety of materials and staggered balconies provided. Despite the articulated façade, it is considered there is no reason why a more compliant design in FSR would not produce a less scaled building design, which is more characteristic of the existing and desired future streetscape character of the Kingsgrove Town Centre, as compared to the proposed five (5) storey design, which will result in a significant impact on the visual amenity of the Kingsgrove shopping strip on Kingsgrove Road.

5 - Comment: The applicant has also argued that the proposal is considered to satisfy the usual objectives for an FSR standard.

As previously stated the underlying purpose of the standard is to control the overall bulk and scale of the developments to achieve an urban character for the 3(c) Business Centre Zone. In this case, Hurstville LEP permits a maximum floor space ratio overall of 1.5:1 in the Kingsgrove Town Centre.

Land and Environment Court's Planning principle for the assessment of height, bulk and scale is exemplified in *Veloshin v Randwick Council* [2007] NSWLEC 428, whereby bulk and scale are generally considered to be subjective terms compared to requirements for floor space and height, which carry comparably greater weight with community input given through public exhibition via the involved LEP statutory process. The planning principle further elaborates that the requirement for a certain floor space ratio is reinforced as it relates to the desired urban character as sought through the planning control. In this case, the floor space ratio of 1.5:1 as a planning control is aimed to achieve a consistent urban character for the Kingsgrove Road.

As previously stated, the predominant two (2) storey built form is unlikely to change significantly under the current planning controls as the subdivision pattern, specifically the narrow widths of the allotments along Kingsgrove Road, do not allow for the provision of sufficient car parking necessary for additional development. In order for the existing commercial area to experience built form changes comparable with the current proposed development, significant amalgamation of allotments would be required. The only exception in the Kingsgrove Town Centre with a higher floor space ratio is that of the Mashman site with a an overall FSR of 2:1, given its land size of 7208 square metres, which is further controlled by a maximum height of four (4) storeys. Whilst the eastern side of Kingsgrove Road under the local government area of Rockdale City Council, zoned 3c - General Business has a three (3) storey height limit for a mixed use development. Accordingly, the proposal five (5) storey height and general bulk of the development is considered to be out of scale with the existing and desired scale of mixed use development on each side of Kingsgrove Road.

Strict compliance with the development standard in question would not hinder the attainments of the aims and objectives above because:

As discussed above, the applicant's reasons do not warrant the excessive variation proposed to the development standard being, the overall floor space ratio.

It is considered the development standard being the overall floor space ratio in this case, is consistent with the aim of the Hurstville LEP that permits a mixed use building to be designed with an appropriate floor space area with respect to achieve the desired urban character of Kingsgrove Town Centre.

The extent of the proposed additional floor space area of 1338.4 square metres is considered to be a severe impact in relation to the overdevelopment of the site, which results in the increased bulk and scale of the mixed use development and further adds to an excessive height of this development. It is also considered to be inconsistent with the existing streetscape character and the desired future character under the current controls.

#### **4. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?**

*In Whebe V Pittwater Council* (2007) NSW LEC 827 (21 December 2007) sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states that:

*'An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved not withstanding non-compliance with the standard.'*

It goes on to state that:

*'The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the*

*standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).’*

Preston CJ in *Wehbe* then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

- “1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;”*

Comment: The objectives of the subject development standard are not achieved notwithstanding non-compliance with the standard because as previously stated the proposed impacts of the development in terms of the general bulk and scale with an overall floor space ratio of 2.28:1 are exceeded is considered to be undesirable to achieve the consistent urban character for the 3(c) Business Centre Zone.

- “2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;”*

Comment: In this case, the purpose of the standard is considered to be specifically relevant in providing a definitive planning outcome to the limit the overall floor space ratio in order control the overall bulk and scale of a development in the 3(c) Business Centre Zone.

- “3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;”*

Comment: In this case, the underlying object of purpose is to control the overall floor space ratio and compliance is required and reasonable.

- “4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;”*

Comment: Having specific regard to *Wehbe v Pittwater Council [2007]*, the development standard has been consistently applied by the Council in granting consents thus upholding the development standard and there is a public benefit in maintaining planning controls. Hence compliance with the standard is necessary and reasonable.

- “5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.”*

Comment: The zoning of the particular land as 3(c) Business Centre Zone is reasonable and appropriate as it allows mixed use development so that a development standard appropriate for that zoning is also considered to be reasonable and necessary as it permits mixed use development to comply with the objectives of the 3(c) zone. That is, the particular parcel of land as 219-231 Kingsgrove Road, Kingsgrove is appropriately included in the particular zone 3(c) Business Centre Zone.

## **5. Is the objection well founded?**

In regard to the appropriate tests, the objection advanced by the applicant that compliance with the development standard is not well founded, and it is considered that granting of development consent would be inconsistent with the aims and objectives of SEPP 1.

### State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004.

In accordance with this policy, all new residential dwellings and those seeking alterations and additions as identified under this policy require a BASIX certificate that measures the Building Sustainability Index to ensure dwellings are designed to use less potable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for house and units.

The application is supported by a satisfactory BASIX certificate that satisfies the requirements for new dwellings under this policy.

### State Environmental Planning Policy No 55 – Remediation of Land

A Stage 1 preliminary site assessment in accordance with the statutory requirements was undertaken on the site. The above assessment recommended that the site can be made suitable for the proposed development provided that additional site investigation and remedial works are carried out and the recommendations outlined in Section 9 of that report prepared by “Environmental Investigation Services” (Ref: E21383K- rpt final dated August 2008).

It is considered, however, that as the above Stage 1 Preliminary Site Assessment has identified contamination on the subject site and that the recognition of contaminants on site is in excess of recommended levels in the Stage 1 Preliminary Site, it is strongly recommended that additional site investigation be undertaken with preparation of a Remediation Action plan. This plan is to be provided for further assessment, prior to any further consideration of the proposal and to satisfy clause 7(1)(b) of this policy, with respect to contaminated land.

Accordingly, Council had requested a remedial action plan from the applicant on the 20 May 2010 for the proposed development on the site. The applicant’s contamination consultant, alternatively proposed that as the Land and Environment Court have approved the previous development on site in June 2009 by recommending that the additional site investigation be deferred until the site is cleared of buildings and be imposed as condition of consent rather than as a condition of deferred commencement consent.

In respect of clause 7(1)(b) of this policy, as the land is contaminated, Council is not satisfied and has insufficient information as to whether the land can be made suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, prior to an additional site investigation being carried out and the formulation of a remedial action plan for the proposal on the site.

### State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Buildings

The subject planning instrument is applicable as the proposed development satisfies the definition of a residential flat building as prescribed under the SEPP. Further to the design quality principles and referral to the Urban Design Review Panel, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning’s publication entitled Residential Flat Design Code.

There are a number of guidelines and rules of thumb contained in the Residential Flat Design Code which accompanies SEPP 65 that are applicable to the proposed development. These provide a meaningful and quantifiable assessment of the merits and deficiencies of the proposal, when assessed against SEPP 65 and in turn inform whether the design quality principles contained in SEPP 65 are addressed.

The following table outlines compliance with the Residential Flat Design Code, where applicable:

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
<b>PART 1 – LOCAL CONTEXT</b>			
<b>BUILDING DEPTH</b>	Max. 18m (glass line to glass line)	Range from 8.4m to max. 14m	Yes
<b>BUILDING SEPARATION</b>	Buildings to achieve daylight access, if less must demonstrate day light access, urban form and privacy achieved satisfactory		
	Up to 4 storeys/12m in height. -12m habitable rooms/balconies to habitable rooms/balconies -9m, habitable rooms/balconies to non-habitable rooms -6m, non-habitable rooms to non-habitable rooms.	Internal separation Unit 2-9 levels 1-3 =17m	Yes
	5 to 8 storeys /12m to 25m in height. -18m habitable rooms/balconies to habitable rooms/balconies -13m, habitable rooms/balconies to non-habitable rooms -9m, non-habitable rooms to non-habitable rooms.	17m southern elevation to habitable rooms of 2 storey mixed use development to the south across Mashman Av	No
<b>FLOOR SPACE RATIO (FSR)</b>	To ensure that the development is in keeping with the	Exceeds overall FSR 1.5:1 with proposed 2.28:1	No

	optimum capacity of the site and the local area. FSR is not specified in the Design Code.		
<b>PART 2 – SITE DESIGN</b>			
<b>DEEP SOIL ZONES</b>	A minimum of 25% (429sq m) of the open space area of a site should be a deep soil zone, more is desirable. Exceptions may be made in urban areas where sites are built out.	Basement is excavated to boundaries and landscaping is reinstated podium planting.	No.
<b>OPEN SPACE</b>	Communal open space should be generally between 25% of the site area. (429sq m)	483 sq m	Yes
<b>PEDESTRIAN ACCESS</b>	Barrier free access to 20% of units	Acceptable access is provided.	Yes
<b>VEHICLE ACCESS</b>	Limit width of driveways to 6 metres and locate vehicle entries on the secondary frontage.	5.65m on the secondary frontage.	Yes
<b>PART 3 – BUILDING DESIGN</b>			
<b>APARTMENT LAYOUT</b>	<p>Max. depth from window of single aspect apartment 8.0m</p> <p>The back of a kitchen should be no more than 8 metres from a window.</p> <p>Width of cross-over apartments more than 15 metres deep should be a minimum of 4 metres.</p>	<p>Unit 8 (levels 1-3 = 8.8m.) All other units dual aspect.</p> <p>All units less than 8m.</p> <p>N/A, as cross through units less than 15m deep.</p>	<p>No</p> <p>Yes</p> <p>N/A</p>

	Unit sizes 1br :50 sqm 2br : 70sqm	All 1br =70sqm All 2br= 83-103sqm	Yes
<b>APARTMENT MIX</b>	To provide a diversity of apartment types, which cater for different household requirements now and in the future.	The proposal incorporates 4 x 1br and 31 x two (2) bedroom units, which does not provide a diversity of apartment mix.	No.
<b>BALCONIES</b>	Primary balconies to be a minimum of 2 metres in depth.	All units have primary balcony  Levels 1-3: 1.6m-2.6m (units 1.3-7,9) 2.4-unit 1 2m –unit 8  level 4 : 1.4m-2.2m units 3-7	No Yes Yes  No
<b>CEILING HEIGHTS</b>	Retail/comm. 3.3m FF Residential 3.3m  2.7 metres for residential levels.	GF retail :5.3m FF residential 2.95m  A ceiling height of 2.95m is provided for levels 1-4.	Yes No  Yes
<b>INTERNAL CIRCULATION</b>	Maximum of 8 units to be accessible from a double loaded corridor.	Units are accessible from various entries and corridors.	Yes
<b>STORAGE</b>	To provide adequate storage for every day household items within easy access of the apartment 1br : 6 cu.m 2br :8 cum	1 br units : 6.5 cub.m  2br units : ranges from 5.8m – 10m.  (can be conditioned)	Yes  No (can be conditioned)



<b>DAYLIGHT ACCESS</b>	Min 70% of units receive min 3 hrs of solar access	Total – 30 units 87.5% receive direct solar access	Yes
	Max 10% units southerly aspect	9% - 3 units only single SE aspect being unit 8 (lv 1-3)	Yes.
<b>NATURAL VENTILATION</b>	60% of residential units should be naturally cross ventilated.	33 units (94%) are naturally cross ventilated	Yes
	25% of kitchens should have access to natural ventilation.	83% -29 units' kitchens have natural cross ventilation.	Yes
<b>WASTE MANAGEMENT</b>	Supply Waste Management Plan in conjunction with the DA.	A Waste Management Plan has been submitted.	Yes
	Locate storage areas for rubbish away from front of development.	Garbage room in the basement	

The following non-compliances with the Residential Flat Design Code are discussed below:

#### *Building Separation*

The separation distance between the proposed building on the southern elevation and the opposite existing two storey development on Mashman Avenue provides a separation distance of 17m from corresponding habitable uses. The Residential Flat Design Code recommends 18m between habitable rooms. Although the proposal falls short by 1m, it is considered to be acceptable, in terms of available solar access and privacy provided to the two storey building.

#### *Floor Space Ratio*

The Residential Flat Design Code recommends that the development should be in keeping with the optimum capacity of the site and the local area. As previously stated, the proposed floor space ratio is well exceeded on the site and accentuates the building design to an undesirable five (5) storey height. The proposal is therefore considered to be an overdevelopment of the site and incompatible with the local context of existing and desired development in the area.

### *Deep Soil Zones*

There is no deep soil zones proposed given the entire site is excavated to boundaries for the basement parking and landscaping is reinstated with podium planting. It is acknowledged that the car park in the current design is best suited below the ground to reduce further visual impact of the proposal and that landscaping is limited via a podium above the basement on the site with the current design of the proposal.

### *Apartment Layout*

The proposed unit - 8 on levels 1-3 (three (3) x units) are single aspect apartments and have a maximum depth of 8.8m. The Residential Flat Design Code recommends single aspect apartments should be limited to a maximum depth of 8m from a window and where a greater depth is proposed, it must be demonstrated how satisfactory solar access and natural ventilation is achieved. The variation is only 800mm and the section of these apartments that is located more than 8m from a window is the bathroom of the apartment. Accordingly, the depth of all primary living areas and all bedrooms within these apartments are considered to comply with the recommended depth. Furthermore, the solar access diagrams submitted with the application indicate 85.7% of all units in the building will receive direct solar access for 3 hours or more between 9am and 3pm in mid-winter.

### *Apartment Mix*

The proposal apartment mix of four (4) x 1br units and thirty one (31) x two (2) bedroom units does not provide a diversity of apartment mix. It is considered a better designed apartment mix, which includes more one (1) bedroom units and at least some three (3) bedroom units could better provide for more diversity in housing choice in the local area.

### *Balconies*

All units are provided with balconies, which are accessed from primary living areas. The proposed units 1, 3-7 and 9 on levels 1-3 and units 3-7 on level 4 provide balconies with a component less than 2m. It is generally considered, the primary area of each balcony does exceed 2m and the lesser width of balconies are a result of the angled building façade along the eastern façade to improve building articulation and solar access to units. Furthermore, it is considered these balconies still provide an adequate and functional area off the primary living areas.

### *Ceiling Heights*

The proposed first floor comprises of residential uses with a floor to ceiling height of 2.95m, whilst the Code recommends a height of 3.3m to promote future flexibility of use. The applicant has proposed that it is unlikely that commercial uses would occupy the first floor in the future and that a further increase in height will increase the overall height of the building. Whilst it is supported that the overall building height, should not be further increased, it is recommended that should approval be granted that the ground floor to ceiling height be reduced to allow the RL of the first floor be lowered to achieve a minimum of 3.3m of floor to ceiling height.

Clause 50 of the Environmental Planning and Assessment Regulation 2000 requires that an application that relates to a residential flat building be accompanied by a Design Verification Statement from a qualified designer stating that the design quality principles as set out in Part 2 of the SEPP 65 are achieved for the development. The Design Verification Statement submitted with the application states that the residential development was designed by Australian Consultant Architects with the design verification statement provided by Joe Aflak, a registered architect and that it was designed in accordance with the Design Quality Principles of SEPP 65.

Whilst full compliance with all of the provisions of SEPP 65 is desirable, it is accepted that this cannot always be achieved. The proposal has a number of unacceptable deficiencies that arise from within the site itself, rather than from site constraints. This is largely due to the excessive density proposed on a relatively small site and excessive height.

#### State Environmental Planning Policy (Infrastructure) 2007

The State Environmental Planning Policy (Infrastructure) 2007 applies to the site, given clause 85, 86 and 87 of the SEPP as the development site is immediately adjacent to rail corridors and involves excavation. Accordingly consideration under RailCorp was sought for the development.

RailCorp raised no objections to the proposal, subject to recommended conditions of consent, which may be imposed on the development with regards to ensuring general safety to the adjacent rail corridor from the proposal and ensuring appropriate acoustic standards to mitigate rail noise and vibration in the proposal in accordance with the submitted acoustic report prepared by ITC Group Pty Ltd dated March 2010.

In accordance with Clause 104 of the SEPP regarding traffic generating development, the proposal is identified in the Table under Schedule 3 as a new retail development with an area greater than 500 square metres on a classified road, being Kingsgrove Road, which is required to consider any response from the RTA for the proposal.

The RTA provided comments to assist Council in its determination of the development application. The RTA further advised of the following modelling analysis undertaken:

*"The intersection performance of Kingsgrove Road/Shaw Street/Mashman Ave was assessed via Sidra Intersection Version 4.0 when both the proposed development and the future development on 11 Mashman Ave are in place. The modelling result revealed the following approximate vehicle queue lengths during the PM peak period:*

*285 metre queue on the Kingsgrove Road north approach*

*208 metre queue on the Kingsgrove Road south approach*

*100 metre queue on the Mashman Ave approach*

*104 metre queue on the Shaw Street approach*

*It is noted that the distance between the intersection and the adjacent intersection of Kingsgrove Road/Kingsgrove Ave Commercial Road is approximately 120 metres. The SIDRA modelling undertaken by the RTA indicates that the cumulative traffic impact from both developments will result in queue spill back to the adjacent intersection. In addition, the Mashman Ave is a short lane with 30 metre length. The queue on the Mashman Ave will overspill into the property.*

The RTA advised that Council should request the developer to investigate mitigation methods to address the traffic impact of the proposed development on the adjacent road network and for Council to consider the cumulative traffic impact of this development and the proposed development on 11 Mashman Avenue as part of its determination of the subject development application.

Council requested a revised traffic report from the applicant to address the RTA's concern. The applicant provided a revised traffic report after reviewing the only traffic report undertaken for the rezoning of the Mashman site, Mashman Site Kingsgrove Rezoning Traffic Report by Masson, Wilson & Twiney, and dated April 2006, which included traffic modelling.

The revised traffic report by the applicant states the current proposal will generate less traffic based on the peak times being Thursday afternoon and Saturday morning as compared to the previous approvals.

It should be noted, the approved mixed use development on the site, which incorporates a supermarket, ground floor shops and 17 residential units with 85 parking spaces specifically for the supermarket, is considered to be more intensive in terms of traffic than the current proposal of 4 retail shops and 35 units based on the traffic movements indicated below:

<u>Situation</u>	<u>Thurs PM Gen</u>	<u>Saturday AM Gen</u>
LEC Appeal 10446 of 2008	220 veh/hr	220 veh/hr
LEC Appeal 10076 of 2009	199 veh/hr	203 veh/hr
Current Application	40 veh/hr	68 veh/hr

It is considered the proposed development site can only realistically be provided by vehicle access from the secondary street frontage of Mashman Avenue as compared to the options available by the Mashman site. Furthermore based on the reduced traffic movements as indicated above from the current proposal and given the Land and Environment Court's approval of the previous development, which also incorporates a supermarket; it is considered the current proposal is likely to generate less traffic movement and better accommodate traffic. It is also noted, a previous condition of approval imposed by the Land and Environment Court was subject to Council's Local Traffic Committee., that no stopping along both frontages of the development be adopted. Similarly, it is recommended such a condition may be imposed, if approval is granted for the proposal.

## **2. Draft Environmental Planning Instruments**

There are no relevant draft environmental planning instruments that specifically apply to this proposal.

## **Any other matters prescribed by the Regulations**

The Regulations prescribe the following matters for consideration for development in the Hurstville Council area:

Safety standards for demolition and compliance with AS 2601 - 2001 apply to the demolition of any buildings affected by the proposal.

## **3. Development Control Plans**

### DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.1 CAR PARKING

The proposal is required to comply with the relevant parking requirements of Section 3.1 of Development Control Plan No 1 shown in tabular form below:

<b>Section 3.1 Car Parking</b>	<b>Control</b>	<b>Plan</b>	<b>Complies</b>
Retail/shop 6 space/100sqm	569 sq.m 34 required	37 spaces	Yes
Residential 1 space / 2br or less	35 spaces required for 31x 2 br units and 4x 1br units	35 spaces provided	Yes
Visitor 1 space per 4 x units	8 spaces required	9 provided	Yes
Designated car wash bay	1 space for 4 or more dwellings	One can be provided on site	Yes
	Total = 77 spaces required	Total = 81 spaces provided. Note, the four (4) additional car spaces added to floor space area on the site.	

The proposal generally complies in full with the car parking requirements under Section 3.1 of Development Control Plan No 1.

### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 3.3: ACCESS AND MOBILITY

The development guidelines require that 1 adaptable dwelling for the first eight units be provided and then 1 for every 10 units after that, or part thereof. This equates to a total of four (4) adaptable dwellings, which are provided in the proposal.

#### Residential

One space per 20 spaces or part thereof to be provided, where parking areas have more than 20 spaces but less than 50 spaces for residential developments. Given the proposed 44 residential spaces, three (3) spaces are required, whilst four (4) provided with the proposal.

#### Retail

One space per 20 spaces or part thereof, where parking areas have more than 20 spaces but less than 50 spaces for residential developments. Given the proposed 37 residential spaces, two (2) spaces are required with only one (1) provided. It is considered, the additional one (1) accessible car space for residential spaces be reallocated to a commercial accessible car space, which will then comply with the requirements for access and mobility under Section 3.3.

### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 3.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is deemed to satisfy the requirements of Development Control Plan No 2 - Crime Prevention through Environmental Design (CPTED) by addressing CPTED principles. These are discussed below.

	<b>Design requirements</b>	<b>Proposal</b>	<b>Compliance (yes, no, N/A)</b>
<b>Fencing</b>	<ul style="list-style-type: none"> <li>• Front max 1m, unless open type</li> </ul>	No fencing is proposed	Yes
<b>Blind corners</b>	<ul style="list-style-type: none"> <li>• Direct pathways with permeable barriers</li> <li>• Mirrors around corners</li> <li>• Glass/steel panels in stairwells</li> <li>•</li> </ul>	Blind corners generally avoided, good viewing to and from street.	Yes
<b>Communal/public areas</b>	<ul style="list-style-type: none"> <li>• Habitable rooms adjacent to areas</li> <li>• Good visibility to stairwells, entries, elevators</li> </ul>	Habitable rooms face on to street. Good views from street to pedestrian entrances and from living areas to the street	Yes
<b>Entrances</b>	<ul style="list-style-type: none"> <li>• Max one entry point per 6-8 dwellings</li> <li>• User can see into building before entering</li> <li>• Entrance clearly recognisable</li> </ul>	<ul style="list-style-type: none"> <li>- N/A for mixed use development of this nature.</li> <li>- Clearly recognisable entry point with good views from the street.</li> </ul>	Yes
<b>Site and building layout</b>	<ul style="list-style-type: none"> <li>• Main entrance orientated towards street, and not from rear lanes</li> <li>• Habitable rooms at front of dwelling</li> </ul>	<ul style="list-style-type: none"> <li>- Main Entrance from Mashman Av and clearly visible from the street</li> <li>- Habitable rooms at front.</li> </ul>	Yes Yes
<b>Landscaping</b>	<ul style="list-style-type: none"> <li>• Low hedges and shrubs or high canopied vegetation</li> <li>• No continuous barrier of dense growth</li> <li>• Ground cover or 2m clean trunks around children's play areas, car parks and pedestrian pathways</li> <li>• Prickly plants used as barriers</li> <li>• Avoid vegetation that conceals building entrances</li> <li>• Large trees next to second storey windows or balconies</li> </ul>	<p>No landscaping considered proposed on the street frontage.</p> <p>One long planter box at the northern corner at the Kingsgrove Road to be reduced to avoid concealment near fire doors.</p>	Yes
<b>Lighting</b>	<ul style="list-style-type: none"> <li>• Use of diffused and/or movement sensitive lights</li> <li>• Access/egress routes illuminated</li> <li>• No glare or dark shadows produced</li> <li>• No lighting spillage onto neighbouring properties</li> <li>• Users can identify a face 15 metres away</li> <li>• Use of energy efficient lamps/fittings/switches</li> </ul>	To be conditioned	Yes
<b>Building identification</b>	<ul style="list-style-type: none"> <li>• Each individual dwelling numbered</li> <li>• Unit numbers provided on each level</li> <li>• Building entries state unit numbers</li> </ul>	To be conditioned	Yes

	accessed from that entry		
<b>Security</b>	<ul style="list-style-type: none"> <li>• Intercom, code or card locks for building and car park entries</li> <li>• Door and window locks comply with AS 220</li> <li>• Security access to basement parking via main building</li> <li>• External storage areas well secured and lit</li> </ul>	Security access to basement parking via main building	Yes
<b>Maintenance</b>	<ul style="list-style-type: none"> <li>• Provision for the speedy removal of graffiti and repair/cleaning of damaged property</li> <li>• Provision of information advising where to go for help and how to report maintenance or vandalism</li> </ul>	To be conditioned	Yes

As can be seen from the above assessment, the development complies in full, or may be conditioned to comply in full with the requirements of Council's Development Control Plan no.2, Section 6.4 - Crime Prevention Through Environmental Design.

#### Hurstville Section 94 Contribution Plans

Council's Section 94 plans applies to the proposal. Conditions requiring relevant contributions would be included, if the application was recommended for approval.

## **4. Impacts**

### **Natural Environment**

The proposal will result in excavation of the site for two (2) levels of basement; accordingly a report on geotechnical and structural stability was submitted by the applicant. Based on the assessment of this report, it is considered the proposal is unlikely to adversely impact on existing drainage patterns and soil stability in the locality, particularly on to the adjacent rail corridor which borders the northern boundary of the site, subject to the recommended conditions of consent from RailCorp. It is considered therefore, unlikely the proposal will have significant adverse impacts on the natural environment.

### **Built Environment**

As previously stated, the additional proposed floor area results in a fifth storey to the mixed use building and is considered to be unsympathetic to the current built form in Kingsgrove Road, which is predominately comprised of two (2) storey mixed use development.

The proposal is also considered to be inconsistent with the scale and height for the future desired streetscape character for Kingsgrove Town Centre based on the current subdivision pattern of adjoining allotments along Kingsgrove Road being narrow in lot width and even compared with larger allotments such as the Mashman site, which permits a maximum of four 4 storeys on the land. Given the previous approved development on site complies with the overall total floor area being 1.49:1 on the site, it is considered the current design as previously stated is an overdevelopment of the site that exceeds the maximum total overall floor space ratio by 1338.4 square metres.

Furthermore, It is considered the elevations to the west and north of the building provide blank walls, particularly to the Mashman site at the west. It is considered, should development be granted, that the blank wall incorporate a design pattern with specific colours and finishes on the blank walls to ensure the proposed north and western elevations of the development are visually appealing.

### **Social & Economic Impacts**

The proposal is likely to generate short-term employment during its construction phase and add to new local housing stock in the Kingsgrove Town Centre. The proposed apartment mix of units for the whole building comprises of only four (4) x one bedroom units and the remaining thirty one (31) x units being all two bedrooms units, which will provide limited diversity in housing choice, particularly for larger families and those opting for one (1) bedroom or studio units.

Furthermore, the application provides no incentive for affordable housing on the site, given the total floor area is exceeded by 1338.4 square metres on the site and is therefore considered to offer limited public benefit.

### **Suitability of the Site**

The contamination assessment undertaken has recommended that the site can be made suitable for the proposed development, after the site is cleared of buildings and additional site investigation is further carried out to ensure appropriate remediation of the site. This is in accordance with the Land and Environment Court on June 2009 and it's determination of contamination matters on the site.

## **5. REFERRALS, SUBMISSIONS AND THE PUBLIC INTEREST**

### **Resident**

Adjoining residents were notified by letter and given fourteen (14) days in which to view the plans in addition the proposal was also publicly exhibited during this time to allow any comments on the proposal. As a result, two (2) submissions were received with the proposal, which are summarised below.

#### Height

The five storeys will be an eye sore and is out of character on a small piece of land with no justification, 3 storeys would be more suitable and blend with the rest of Belmore Rd.

Comment: The five storey height limit is not supported as discussed in the report.

#### Parking

Parking will be a nightmare for residents and visitors, given a lot of the time there is not enough now.

Comment: The proposed parking satisfies Council requirements for parking.

#### Overshadowing

The proposal will appear to generate more overshadowing along Kingsgrove Road than the previous approval.

Comment: The proposal is considered to result in only marginally more overshadowing than the approved development on the site as shown on the shadow cast diagrams for June 22. It is considered generally based on



the above shadow cast diagrams, orientation of the site, the distance and the location of adjoining development to the south along Kingsgrove Road that a minimum of three hours of morning sun may be achieved to these subject two storey properties.

Are all units wheel chair friendly?

Comment: The proposal provides for four (4) adaptable units which comply with Council's DCP on access and mobility under Section 3.3.

Are the disabled toilets available for all retail customers or general public?

Comment: Access to the proposed disabled toilets are be provided for only retail customers.

Is the landscaped area accessible to public or only to residents and is the car park only allocated to retail customers or general public.

Comment: The communal area is designed to be accessed by only the occupiers of the residential units. The retail parking in the basements is designed to be occupied for retail customers and retail staff.

There appears to be a discrepancy between the hydraulic plans and floor plans of the basement regarding the number of disabled car spaces and stairs on basement 2, which is correct.

Comment: The proposed architectural floor plan of basement is the correct plan illustrating four disabled car spaces with two 2 fire stairs.

The proposed multicoloured materials of the façade will not fit in with the neighbouring buildings.

Comment: It is considered the proposed multicoloured materials of the façade are contemporary and provide diversity to the existing neighbouring dwellings.

The proposal will result in underground fumes as well as fumes in surrounding streets

Comment: A mechanical ventilation system is required to be installed to provide adequate air quality in the basement. However, it is considered unlikely that surrounding streets are likely to have any significant fumes

Continuous traffic generation due to deliveries by trucks to Mashmans all day.

Comment: Traffic congestion has been previously addressed in the report.

Increased parking problems for Kingsgrove Road and surrounding streets.

Comment: The number of parking spaces complies with the parking requirements of Section 3.1 of Development Control Plan No 1.

The Mashmans St George Pottery business will be greatly affected due to continuous increased traffic directly in front of main entrance.

Comment: The pottery manufacturing site that comprises of the Mashman site is likely to cease in the near future, given the site has been recently rezoned to allow new use on the site, which is likely to be mixed use development.

Light/sunshine will be eroded in very narrow Mashman Avenue and shade will appear due to proposed 40.05 metre high building directly opposite existing shops.

Comment: The shadow cast diagrams indicate that shadows will be cast from the proposed building on June 22 to the existing two storey building containing shops on the opposite side of Mashman Avenue. However, it is considered these shops will still receive at least three (3) hours of solar access in the morning.

Proposed development appears very congested from the site plan and the land appears overdeveloped maybe due to the owner trying to get the maximum return on their capital investment. It is noted from the site plan the FSR IS 2.25:1, which is not in accordance with Council's requirement.

Comment: The proposal exceeds the overall maximum floor space ratio of 1.5:1 by 0.78, which results in an overall floor space ratio of 2.28:1. As previously stated, the proposal is considered to be an overdevelopment of the site and is not supported in its current form.

## **PUBLIC INTEREST**

The SEPP 1 objection to overall floor space ratio is not supported as previously detailed having regard to the application of the principles articulated by the Court. Furthermore, overall floor space ratio has not been abandoned by Council in the Kingsgrove Town Centre. The proposal is considered to be not in the public interest as it is an overdevelopment of the site.

Despite the excessive floor space ratio of 1338.4 square metres proposed on the site, there has been no trade-off/incentive provided by the applicant such as the potential for some units to made affordable housing on the site. It is also considered, there is very limited selection in housing choice, given the apartment mix is for thirty one (31) x two bedroom units and only four (4) x one bedroom units. Given the above, it is considered, there is a public benefit in maintaining the current planning controls for overall floor space ratio on the site.

## **Internal - Council Referrals**

### Development Engineer

Council's Development Engineer raised no objections to the proposal and advised of the following requirements:

*The proposed extension of Council's pipeline along Mashman Avenue shall be approved by Council's Engineer prior to the issue of the construction certificate. A separate application under Section 138 of the Roads Act 1993 for that portion of the work within the Road Reserve shall be submitted to Council for approval of such drainage works.*

*This application shall be approved by Council **prior to the issue of the Construction Certificate.***

*A report from a Hydraulics Engineer should be submitted to verify the methods of*

*protection of the basement area being inundated with the storm waters from the overland flows along Mashman Avenue generated in a 100 year storm. This report should consider any new alignment levels and include recommendations for any design changes. Full details shall accompany the application for the construction Certificate.*

#### Manager - Development Advice

Council's Manager of Development Advice raised no objections to the proposal and commented on the standard requirements for mixed use developments and provisions for the on-site detention system and drainage requirements on the underground basement.

#### Senior Health and Building Surveyor

No objections were raised by the Senior Health and Building Surveyor subject to recommended conditions of consent, if the proposal was approved, in respect of rail related noise and vibration in accordance with the recommended acoustic report submitted with the application and the requirement of a validation report confirming that the site has been remediated in accordance with the Department of Environment and Climate Change's guidelines for Consultants Reporting on Contaminated Sites.

#### Manager – Environmental Services

No objection was raised to the proposal regarding waste management and proposed waste facilities on the site subject to recommended conditions of consent.

#### Council's Manager, Infrastructure Planning

Council's Manager, Infrastructure Planning has raised no objections to the proposed development on traffic grounds. In addition, conditions are recommended to be imposed, in the event that the application be approved, which relate to loading on site, compliance of parking bays and manoeuvrability and the maximum size of trucks to service the basement car park restricted to small rigid vehicle.

#### Tree Management Officer

No objection was raised by Council's Tree Management Officer in relation to the removal of the trees from the site.

### **External Referrals**

#### Roads and Traffic Authority

The RTA provided advice to assist Council in its determination of the application. In addition, the RTA advised it has undertaken traffic modelling in the intersection analysis in the vicinity of the site and the Mashman site, which has indicated cumulative traffic impacts from both developments will result in queue spillback to the adjacent intersection and that Mashman Avenue is a short lane with 30m lane length with queue on the Mashman Avenue will overspill into the property.

It further advised Council to request that the developer investigate mitigation measures to address the traffic impact of the proposal on the adjacent road network and that Council

should consider the cumulative traffic impact of the proposal with the Mashman site as part of its determination of the subject development.

A revised traffic report submitted by the applicant has indicated that the current proposal will result in reduced traffic movements as compared to the approved development that incorporates a supermarket on site, which is considered to be more intensive development with regard to traffic generation. Given the Land and Environment Court's approval of the development on the site with no stopping along both frontages of the development to be adopted as the only mitigation measures; it is considered based on the indicative reduced traffic movements as stated in the applicant's revised traffic report that the proposal may be accommodated on site with regard to acceptable traffic impacts from the proposal.

Additional conditions related to compliance with vehicle sight lines, noise and manoeuvring were recommended in the event of the application being approved.

### RailCorp

Concurrence was obtained from RailCorp regarding the proposed development, subject to recommended conditions of consent, which may be imposed on the development with regards to ensuring general safety to the adjacent rail corridor from the proposal and to further ensure appropriate acoustic standards to mitigate rail noise and vibration and standards related to geotechnical and structural provisions.

### Urban Design Review Panel

The design was discussed at the Design Review Panel on 1 April 2009 and also commented on the proposal as a preliminary development application in November 2009.

Below is a summary of the report to Council with comments in italics made in relation to the preDA.

### General Comments:

The Panel has seen various proposals for this site over the last few years. The Panel previously saw this proposal at the Panel meeting of November 2009. This proposal has been amended as result of the report of that meeting.

*There is an existing approval by the Land and Environment Court for a development on the subject site which was considered by the Panel in March 2009. Various amendments negotiated during the Court process resulted in an acceptable building. The applicant is now exploring alternative options for the site and submitted preliminary plans for comment by the Panel. The supermarket which was a major part of the approved scheme, together with several levels of above-ground parking have now both been deleted. The floor space for parking was not required to be included in FSR calculations, which resulted in a building form in part 5 storeys above ground although the FSR ratio was approximately only 1.5:1.*

*The FSR of the present scheme was advised to be of the order of 3:1, some 100% above that permitted in the Hurstville LEP, and the applicant argued that this was reasonable because the overall bulk was similar to that in the approved plan. This proposition could not be accepted by the Panel in that there are no particular circumstances which could justify an excess of this order and there is no reason why a development complying with the FSR would not be acceptable. Approval to a density of this order would set an unacceptable precedent unless it was to be part of an overall review of densities in the centre. The combination of*

*ground-floor retail with residential units above is satisfactory in principle on this site, but the proposal would require major reconsideration if the density issue is to be addressed.*

### **1. Context**

*The site is prominent in the Kingsgrove retail centre and its interface with the rail reserve to the north and the “Mashman Pottery and Tile Works” site to the west pose particular urban design challenges.*

No additional comment made by the Panel.

### **2. Scale**

*Generally acceptable in relation to the Kingsgrove Road and the railway, but potentially somewhat too dominant in the narrow Mashman Avenue.*

The Panel considers that the proposal is generally satisfactory to Mashman Avenue.

### **3. Built Form**

*The ground-floor commercial/retail is acceptable in principle but the form of the residential units is of concern. Although their height could be acceptable on the Kingsgrove Road frontage they could be unduly bulky on Mashman Avenue, unlike the approved scheme which was similar in height on Kingsgrove Road but had lower units on the western side. The form as proposed also generates unsatisfactory amenity issues for the units themselves and the central open space. Its relationship to potential future residential development on the Mashman site where there will be a height limit of four storeys is of concern. With reduction in density it would be desirable for building on the western side to be of similar height. The comments provided below under 6.0 Landscape are also relevant in relation to building form.*

See reference to Mashman Avenue above in regard to the built form in this location. Generally it is now considered satisfactory.

### **4. Density**

*For the reasons set out in General above the density is considered to be unacceptable.*

Whilst the Panel does not agree in principle that the density should be so substantially higher than that permitted for the area it acknowledges that there is an approved DA for a similar height which has given rise to this density.

### **5. Resource, Energy and Water Efficiency**

*Subject to BASIX.*

### **6. Landscape**

*No ground-level landscape is proposed. Since the blank wall of the lower level abuts the rail corridor it is considered that at least a small area to the west on the common boundary should have deep-soil planting.*

The Panel considers that the common space is now generally very pleasant and its relationship to the glazed area at the ground level should be pleasant. A minor adjustment to

the space below the northern wing could provide for sitting areas which could take better advantage of winter sunlight in the middle of the day.

## **7. Amenity**

*The excessive density has resulted in residential units directly exposed to road and rail noise, and the layout produces undesirable internal corner issues. Although it may be that the Residential Design Code standards could be achieved in this scheme, the recommended reduction in density should result in substantial improvement in amenity.*

*The levels of the ground-floor retail frontages have been stepped in part to allow for easier access from the street, but the plans appear to indicate steps from the colonnade into the shops, which is very undesirable. The proponent would be encouraged to set the basement carparking at a level so as to allow all shops to follow the grade of Kingsgrove Road with a continuous retail frontage (with residential entry off Mashman Avenue).*

Generally the Panel considers that the planning of the proposal is a lot better. At ground level in particular the changes made have improved the proposal. Each shop now has level access to the footpath. (There are still steps between each shop however this is inevitable given the footpath levels.) The inclusion of kitchenettes in the retail areas, the separate service corridor for retail and residential have good improvements. At long last, Mashman Avenue has been activated to a satisfactory level. The units 8 and 9 on the corner have now been improved.

It is suggested that the central lift lobbies could be planned to have small window looking over the communal space below which would make it a lot more pleasant and allow daylight into the lobbies. It is also suggested that the balconies to Kingsgrove Road could have more attention paid to noise attenuation that would be inevitable from the road. This could be by means of louvres etc.

## **8. Safety and Security**

*Satisfactory.*

## **9. Social Dimensions**

*The scheme does not provide for any area which could act effectively as a communal space, as did the approved scheme. This could readily be included if the density was to be reduced.*

As noted above, the Panel considers that the proposed communal space should be very successful. Also improvements to the ground level for the residents vastly improved.

## **10. Aesthetics**

*The northern elevation to the railway in this proposal has to deal with only a single level of blank wall which is of significantly less concern than the previous scheme. It is premature to comment on other aspects.*

The Panel considers that the aesthetics are generally satisfactory.

## **Recommendations**

*The Panel is now supportive of the proposal with minor changes as noted above.*

**Comment:** The proposed design of the building has been amended with respect to the Panel's previous comment on the design submitted with the pre DA. The issue of density has still not been overcome by the Panel and the Panel's comments are supported in that the proposed total floor space ratio is considered to be excessive and would set an unacceptable precedent in the area and there is no reasonable justification for the excessive density as proposed in the application.

## 5. CONCLUSION

The application has been assessed against the relevant planning policies and controls. The assessment has found that the proposal is in excess of the FSR development standard for the site. The arguments proposed under the SEPP 1 objection are not well founded. It is considered that the proposal is an overdevelopment of this site in respect to non complying floor space ratio and will impose a five (5) storey height as undesirable to the existing development and desired development on the Mashman site within the Kingsgrove Town Centre. The proposal will visually impact on the existing and desired streetscape of Kingsgrove Town Centre and adjoining properties in the vicinity and is therefore not in the public interest. For the abovementioned reasons, the proposal is not supported.

Following a detailed assessment under the heads of consideration under Section 79C of the Environmental Planning and Assessment Act as amended, it is recommended that the SEPP No. 1 Objection not be supported and the proposal be refused for the reasons as set out below.

## RECOMMENDATION

### Wording for refusal:

- A. The SEPP NO.1 Objection is not supported.
- B. Further, that pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the **Joint Regional Planning Panel** refuses development consent to Development Application 10/DA-80 for the five storey mixed use development on Lots 1 DP 534643 and known as 219 -231 Kingsgrove Road, Kingsgrove for the following reasons:
  - 1. The proposed floor space ratio exceeds the required 1.5:1 floor space ratio under Council's Local Environmental Plan and the objection to the SEPP No.1 is not well-founded. (Section 79C(1)(a)(i).
  - 2. The proposal is seen to be an overdevelopment of the subject site being excessive in density and height and unsympathetic in appearance to the existing and desired streetscape of Kingsgrove Road. (Section 79C(1)(b)).
  - 3. The proposal is unsatisfactory in relation to Clause 30(2) of State Environmental Planning Policy No.65 – Design Quality of Residential Flat Developments with regard to floor space ratio and density and apartment mix.

4. The proposed development has insufficient information in relation to the amount of contamination on the site and accordingly suitability of the site for the development cannot be satisfied. (Section 79C(1)(c)).
5. The proposal is not in the public interest. (Section 79C(1)(e)).